

PT 00-31

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**ST. JOHN
LUTHERAN CHURCH,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**Nos. 99-PT-0011
(98-22-0753)**

**Real Estate Tax Exemption for
1998 Assessment Year**

P.I.N: 09-28-208-019

DuPage County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Kurt Heerwagan of Boeger, Heerwagen, Lustoff & Brendemul on behalf of St. John Lutheran Church (hereinafter the “applicant”); Mr. Robert G. Rybica, Assistant State’s Attorney for the County of DuPage, on behalf of the DuPage County Board of Review (hereinafter the “Board”).

SYNOPSIS: This proceedings raises the limited issue of whether the parsonage located on real state identified by DuPage County Parcel Index Number 09-28-208-019¹ qualifies for exemption from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

The controversy arises as follows:

Applicant filed a Petition for Tax Exemption with the Board on June 17, 1998. Dept. Ex. No. 1. The Board reviewed applicant's petition and subsequently recommended

1. The property on which the parsonage is situated shall hereinafter be referred to as the “subject property;” the parsonage itself shall hereinafter be referred to as the “parsonage.”

to the Illinois Department of Revenue (hereinafter the "Department") that the entire subject property be granted an exemption. Dept. Ex. No. 2. The Department partially rejected this recommendation by issuing a determination, dated December 23, 1998, which found that all portions of the subject property except the parsonage, were exempt. (Dept. Ex. No. 3).

Applicant filed a timely appeal to this denials and subsequently presented evidence at separate evidentiary hearings. After carefully reviewing the record compiled at that hearing, I recommend that the Department's determination as to the parsonage be reversed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position is that the parsonage is not in exempt use. Dept. Ex. No. 3.
3. Applicant is a parish within the Missouri Synod of the Evangelical Lutheran Church. Its basic organizational purposes are to foster Christian fellowship and worship in accordance with tenets set forth in the New Testament. Dept. Ex. No. 1; Applicant Group Ex. No. 1, Docs C, E.
4. The subject property, which contains applicant's church and the parsonage, is located at 7214 S. Cass Ave, Darien, IL 60561. Dept. Ex. No. 2; Applicant Group Ex. No. 1, Doc. C.
5. Applicant obtained ownership of the subject property by means of a trustee's deed dated December 15, 1957. Applicant Group Ex. No. 1, Doc. A.

6. All of the pastors who served applicant's congregation were consistently required to live in the parsonage as a condition of their employment. Tr. pp. 14-15.
7. David Bottoroff was applicant's pastor throughout the 1998 assessment year. The call to vocation that he received from applicant required that he live in the parsonage as a condition of his employment. Applicant Group Ex. No. 1, Doc. E.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the parsonage located on the subject property from 1998 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.* Accordingly, under the reasoning given below, the Department's determination that said parsonage was not in exempt use, as required by Section 15-40, should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-1 *et seq.* (hereinafter the "Code"). The Code provisions that govern disposition of this case are found in 35 **ILCS** 200/15-40, which provides, in relevant part, for exemption of the following:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and use in conjunction therewith as housing facilities provided for

ministers ... performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations... [.]

A parsonage ... or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The provisions governing the exemption of parsonages require, in substance, that the property be: (1) owned by a duly qualified religious institution; and, (2) used as a housing facility for clergy employed by that religious institution; and, (3) occupied by clergy who must reside in the facility as a condition of employment. 35 ILCS 200/15-40; McKenzie v. Johnson, 98 Ill.2d 87 (1983). Only the last requirement is at issue herein, as the Department's denial was based strictly on lack of exempt use. Dept. Ex. No. 3.

With respect to that requirement, it is briefly noted that the Call to Vocation applicant issued to its pastor (Applicant Group Ex. No. 1, Doc. E) proves that the parsonage was used for the very narrow set of residential purposes set forth in Section 15-40. Consequently, it appears that the instant denial was predicated on a lack of

information that applicant cured at hearing. This being the case, the Department's determination with respect to the parsonage should be reversed.

WHEREFORE, for all the above-stated reasons, it is my recommendation the parsonage situated on real estate identified by DuPage County Parcel Index Number 09-28-208-019 be exempt from 1998 real estate taxes under Section 15-40 of the Property Tax Code.

October 26, 2000

Date

Alan I. Marcus
Administrative Law Judge